

IN THE MATTER OF LICENSE NO. 317225 AND DOCUMENT NO. BK 7874
Issued to: William A. Pridgen

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1689

William A. Pridgen BK

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 5 August 1966, an Examiner of the United States Coast Guard at Boston, Mass. suspended Appellant's license for two months upon finding him guilty of negligence. The specifications found proved allege that while serving as master on board the United States MV MAUMEE SUN under authority of the license above described, on or about 23 November 1965, Appellant negligently failed to maintain a proper lookout, and failed to navigate with caution after hearing a danger signal from SS AMERICAN PILOT, thereby contributing to a collision with that vessel.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence testimony previously taken from the pilot of AMERICAN PILOT, from the chief engineer, and the helmsman of MAUMEE SUN, and from the Corps of Engineers marine observer from WING'S NECK.

In defense, Appellant offered in evidence his own previously taken testimony and that of certain live witnesses.

At the end of the hearing, the Examiner rendered decision in which he concluded that the charge and two specifications had been proved. The Examiner then entered an order suspending Appellant's license for a period of two months.

The entire decision was served on 9 August 1966. Appeal was timely filed on 12 August 1966 and perfected on 21 February 1967.

FINDINGS OF FACT

On 23 November 1965, Appellant was serving as master of the United States MV MAUMEE SUN and acting under authority of his

license while the ship was en route from New Jersey to Revere, Massachusetts via the Cape Code Canal. At about 2130 that night, MAUMEE SUN was being navigated across Buzzard's Bay approaching Hog Island Channel from the Southwest. Speed was about nine knots. Heading was 032° to make good 035°t.

At about the same time, AMERICAN PILOT, having transited the land cut of Cape Code Canal, en route from Boston to New York, was entering Hog Island Channel.

At 2133, the vessel, on its own right-hand side of the channel, passed Beacon 11, at about 12 knots, on a heading of 219° to make good 215°t, the channel course. The intention of AMERICAN PILOT was to make a leftward turn into Cleveland Ledge Channel at the proper point, as is usual for deep draft vessels.

MAUMEE SUN was observed approaching the south end of Hog Island Channel from the southwest. (It is common practice for lesser draft vessels not to enter the marked and dredged channel at Cleveland Ledge but to cross the Bay as MAUMEE SUN was doing.)

Only the green sidelight of MAUMEE SUN was seen. Kept under observation, the green light of MAUMEE SUN kept an apparently steady bearing. About 2138 AMERICAN PILOT swung two degrees to the left and remained on that heading for about a minute.

Three times, during the approach of the vessels, the pilot of AMERICAN PILOT signaled one blast. No reply was ever heard. AMERICAN PILOT's speed was reduced to one half. Since the bearing of MAUMEE SUN had been moving toward its bow, AMERICAN PILOT gave a danger signal, slowed, and reversed when the vessels were about a quarter of a mile apart.

MAUMEE SUN took no immediate action after the danger signal because Appellant did not think the signal was directed to him. Then, in the jaws of collision, MAUMEE SUN, with Appellant taking the wheel himself, came full right and full left. MAUMEE SUN was struck on the port quarter while still swinging right.

The collision occurred at about 2146 near Buoy "3" on the west side of the channel.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that:

- (1) The Examiner failed to give proper weight to the testimony of witnesses aboard MAUMEE SUN, and gave too

much weight to a witness aboard AMERICAN PILOT;

- (2) There was no failure to maintain a proper lookout since the practice on coastal tankers is to keep the lookout on the bridge, not at the bow; and
- (3) There was no failure to navigate with caution after AMERICAN PILOT's danger signal was heard because Appellant took in extremis action and prepared for collision.

APPEARANCE: Mendes, & Mount, New York, N. Y., by Alfred A. Lohn, Esq.

OPINION

I

The Examiner in this case, noting that there was more than the usual conflicts of testimony found in collision cases, chose to accept the version of events offered by the pilot of AMERICAN PILOT and to reject that given by Appellant. Appellant complains that this was unjustified, and that the testimony of "all the Sun Oil Company witness" was "virtually ignored."

The point is not well taken.

The pilot of AMERICAN PILOT testified that the collision occurred on his side of the channel. This testimony was corroborated by that of the Corps of Engineers observer at Wing's Neck, who declared that AMERICAN PILOT was in proper position ("Cushing" testimony, Q, 154).

Appellant identified the place of collision as well over on his side of the channel, and stated that he was trying to get out of the channel to avoid collision.

Between the two, there was ample reason to discredit Appellant's version in favor of the corroborated version of the other pilot. The correctness of the rejection of Appellant's testimony is verified by Appellant's estimate of the heading of AMERICAN PILOT at the moment of impact. He said, "My opinion was she was about 195." ("Pridgen" testimony, Q. 424). He repeated this opinion (Q. 426). He asserted his belief that the collision was caused by an untimely effort of AMERICAN PILOT to turn left into Cleveland Lodge Channel (Q. 425).

Had the collision occurred where and as Appellant claimed, the heading of AMERICAN PILOT would have had to be as he asserted,

about 195°t. But the heading of that ship, by any interpretation of its course recorder in view of the oral testimony, could not have been less than 213°t.

Further, had the collision occurred as Appellant asserts, AMERICAN PILOT would have been swinging markedly left at the moment of impact and the vessels would have gone out of the channel to the east, whereas the course recorder shows a rapid change to the right immediately after impact, and the vessels went out of the channel to the west.

II

Appellant's second point is that there was no failure to maintain a proper lookout. "Chief Mate Marteleik was serving as lookout from the bridge, and he had no other duty because Captain Pridgen was in charge of the navigation of the vessel." Appellant persistently has argued, both on the record of hearing and on appeal, as though the issue were whether the lookout should have been on the bow or on the bridge. This is not the question at all.

Whether or not the chief mate had other duties, he was not a lookout. He was in the chartroom at the time he heard a one blast signal sounded. He testified several times that because he was in the chartroom he did not know which ship sounded the signal.

It is noteworthy that the chief mate had apprehensions of collision before Appellant did. He warned Appellant of his feelings, but subsided when Appellant told him "we're all right." ("Marteliek" testimony, QQ 124-134). The mate believed that Appellant had seen something which the mate had not seen, justifying acceptance of Appellant's assurance that "we're all right." Obviously, if this was the ship's "lookout," a proper lookout was not being maintained. If the mate's warning had been more vigorously presented, as it might have been had he believed that he was in a better position than Appellant to evaluate the situation, the collision might have been avoided. This, Appellant cannot be heard to say that the failure to have a proper lookout did not contribute to the collision.

III

Appellant's third point is that he did not "fail to navigate his vessel with due caution upon hearing the danger signal of the AMERICAN PILOT."

On appeal, Appellant adopts inconsistent positions. He adopts the testimony of the other pilot that the distance between vessels at the time of the danger signal was one quarter mile, and claims

that he had no time to do anything but to take emergency action to protect his ship, his cargo, and his crew.

On the record, however, Appellant testified that he paid no attention to the danger signal because he assumed that it must have been directed to some other ship, since he was still a mile away from AMERICAN PILOT ("Pridgen" testimony QQ 271-277), although he looked for another vessel and saw none.

(Considering that Appellant also testified that at a distance of one mile he blew a one blast signal and received no answer, appreciably later hearing a danger signal after the vessels had closed, one sees all the more reason why the Examiner properly rejected Appellant's testimony).

The record supports the finding that Appellant did not take proper action after hearing a danger signal from the other vessel.

IV

Appellant complains, in connection with his first point, that the Examiner improperly found as a fact that Appellant was unaware of the presence of AMERICAN PILOT until after Appellant had entered Hog Island Channel. Appellant points out that the Examiner dismissed a specification alleging a failure to sound a danger signal on the reasoning that Appellant could not be chargeable with a fault in failing to sound a signal to a vessel which he was unaware of.

It is conceded that the Examiner confuses me on this point. In his "Subsidiary Findings of Fact," he says,

"Captain Pridgen testified that when the MAUMEE SUN was about a mile away from the AMERICAN PILOT, he sounded a one blast signal, but that he heard no answer to the signal. In any event..."

This, of course, is not a "finding of fact". Mere recitations of testimony are not "findings", especially if they are to be rejected later.

The gist of the "Opinion" is clearly that the Examiner did not believe that the one blast signal sounded. This obviously led the Examiner to disregard Appellant's testimony about hearing AMERICAN PILOT's danger signal: "I wondered why he was blowing them..." ("Pridgen" testimony, Q. 32). This itself indicates doubt as to the intention of the other vessel.

Bewildering, somewhat, but also proving that doubt existed, is

this testimony of the Appellant:

"Q. So when you blew one and you received no reply did you discuss it with him [The Chief Mate]?

A. I think he said something about what's the man want, what's he trying to do?

"Q. No, no, when you blew one?

A. That is what I said. When he blew one and then I said what is the man trying to do. What does he want? And the--all right, go ahead...

"Q. I'm sorry--I'm talking about your one-blast signal?

"A. Well, I think that's what we were talking about.

"Q. Yes, and the mate said what?

A. The mate didn't say...I said and I wonder what he's trying to do?

"Q. Oh, you said that to the mate?

A. That's right. I wonder what he wants?" ("Pridgen" testimony QQ 285-289)

There is enough in this little exchange alone to justify the Examiner's rejection of Appellant's testimony as was argued against in Appellant's Point One. While Appellant claims to have heard no signal from the other vessel other than the danger signal, despite the testimony of the other pilot that he had signaled with one blast more than once, Appellant slipped, and in his second answer quoted above admitted that he heard a one blast signal from the other vessel and wondered what the other vessel wanted.

Appellant also first attributed the question about the other vessel's intention to the mate, then quickly retracted and attributed the comment to himself.

When it is recalled that MAUMEE SUN's mate testified that he was in the chart room when he heard a one blast signal and thus could not identify the sounding vessel, Appellant's stated position is undermined. If the mate was telling the truth, and if there is any truth in Appellant's testimony just quoted, the alleged conversation took place not when Appellant sounded a signal, for if he did sound one the mate was not there, but when Appellant heard

da one blast signal from the other ship.

Again, if there is any truth in Appellant's testimony on this point, the only construction that could be placed on it is that the comment was made after hearing a signal from the other ship. Appellant contends that he sounded a one blast signal at a distance of one mile at a time when he was to his right and AMERICAN PILOT was still safely to its right. Thus, Appellant says, he was not disturbed when he heard no reply to his proposal because, in his experience, vessels frequently do not reply to routine signals when the situation is so clear that the mode of passing is obvious.

No one could believe this and also believe that Appellant, having initiated a meeting proposal that was so routine that he was undisturbed by receiving no answer, then turned to his mate and wondered aloud what the other vessel "wanted".

Had the Examiner been so minded, he could well have found as fact that Appellant had heard a proposal from the other vessel and had expressed wonder at that. The answer to Appellant's question is then simple. He was moving onto the wrong side of the channel and AMERICAN PILOT was asking for assurance that he would go where he belonged, to his own right.

(I wish to make it crystal clear that these comments are not to be construed as approbation of AMERICAN PILOT's asserted iteration and reiteration of one blast signals without sounding a danger signal earlier than it did. See Decision on Appeal No. 1570.)

If the Examiner had accorded more credence to Appellant's testimony, he would have been forced to find the danger signal specification proved.

One thing is clear, however. If the Examiner's belief that Appellant was unaware of the presence of AMERICAN PILOT until too late is truly erroneous, Appellant cannot complain.

An Examiner's findings are not evaluated like a witness's testimony. It is enough that the findings be predicated on substantial evidence, and they are, here, with respect to the specifications found proved.

ORDER

The order of the Examiner dated at Boston, Massachusetts, on 5 August 1966, is AFFIRMED.

W. J. SMITH

Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D. C., this 25th day of March 1968.

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